

REMARKS

By this amendment, claim 3 has been amended to correct the informality noted by the Examiner. Claims 1, 2, 4, 5 and 7 stand rejected under 35 U.S.C. §102 as being anticipated by Swift et al., 4,664,432. Similarly, claims 8, 10-12, 14, 15 and 17 were rejected under 35 U.S.C. §103(a) as being obvious over that Swift patent.

Claims 1, 3 and 9 were rejected under 35 U.S.C. §102(b) as being anticipated by Bienz, and claims 10, 13 and 18 were rejected under 35 U.S.C. §103(a) as being unpatentable over Bienz.

Both Swift and Bienz are directed toward security seals rather than hangers for suspending an article of merchandise from a rod like the present invention as defined by the claims. The Examiner recognizes that Swift et al. and Bienz are intended for a different purpose but states:

... a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

The Applicant would appreciate receiving a recitation for this statement. The Examiner apparently takes the position that the preamble of the claim is to be ignored for purposes of patentability. It is respectfully submitted that there are many situations, like the present, in which the nature of the invention is dependent upon the preamble and the preamble is considered in determining patentability.

In any event, it is not seen how the security seals of Swift or Bienz would be useful as hangers for suspending an article of merchandise from the rod. In order to emphasize this

distinction, the claims have been amended to define that the first opening in the planar surface is at the top of the planar surface, opposite to the base from which the tab extends. This is clearly not the case in the Swift reference (nor Swift 4,811,977) or Bienz. In the form disclosed they are incapable of acting as hangers for suspending an article of merchandise from the rod. If what the Examiner identifies as the openings in these references were adjacent the opposite end, they might be capable of doing that but would still not anticipate the claim because the present claims must be read with the preamble in order to ascertain the essence of the invention.

Reconsideration and allowance is accordingly respectfully solicited.

Dated:

Respectfully submitted,

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